



Paper No. 9

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JUL 23 2002

OFFICE OF PETITIONS

In re Application of	:	
Stanford, Winter, Smith & Monsen	:	
Application No.: 10/051,454	:	DECISION REFUSING STATUS
Filed: January 18, 2002	:	UNDER 37 CFR 1.47(a)
Attorney Docket No.: 15499.174.1	:	
For: FLEXURE RESISTANT BASE PLATE FOR	:	
A BASKETBALL GOAL ASSEMBLY	:	

This is a decision on the petition under 37 CFR 1.47(a), filed April 18, 2002 (certificate of mailing date April 11, 2002).

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. Any response should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)" and may include an oath or declaration executed by the inventor. **Failure to respond will result in abandonment of the application.**

The above-identified application was filed on January 18, 2002 without an executed oath or declaration and filing fees. Accordingly, on February 11, 2002, a Notice to File Missing Parts of Nonprovisional Application (Notice) was mailed, requiring an executed oath or declaration and filing fees, and a surcharge for their late filing.

In response, on April 19, 2002 (certificate of mailing date April 11, 2002), a declaration executed by 3 of 4 joint inventors, the surcharge, application filing fees, the petition fee, and the instant petition were filed.

A grantable petition under 37 CFR 1.47(a) requires

- (1) a petition including proof of the pertinent facts establishing that the joint inventor(s) refuses to join, or cannot be found or reached after diligent effort,
- (2) a proper oath or Declaration executed by the available joint inventor(s),
- (3) the fee of \$130 as specified in 37 CFR § 1.17(h), and
- (4) the last known address of the omitted inventor(s).

This petition lacks items (1) and (2) above.

As to item (1), Applicants have failed to establish that the non-signing inventor, Charles Monsen, cannot be located. Petitioners state that an attempt to send Mr. Monsen the application papers at his last known address was unsuccessful because the addressee had moved.

Where inability to find or reach a non-signing inventor is alleged, an affidavit or declaration of

facts should be submitted that fully describes the exact facts which are relied on to establish that a diligent effort was made to locate the non-signing inventor.

The affidavit or declaration of facts must be signed, where at all possible, by a person having *firsthand knowledge* of the facts recited therein. Statements based on hearsay will not normally be accepted. Copies of documentary evidence such as certified mail return receipt, any inquiries of local telephone directories, telegrams, searches of Internet databases, such as LEXIS, etc., that support a finding that the non-signing inventor could not be found or reached should be made part of the affidavit or declaration. It is important that the affidavit or declaration contain statements of fact as opposed to conclusions.

A showing of diligence is critical to obtaining Rule 47 status when it is alleged that an inventor cannot be located or reached.

As to item (2), an oath or declaration for the patent application in compliance with 37 CFR 1.63 and 1.64 still has not been presented. The citizenship of each inventor must be included on the oath or declaration. As listing the citizenship for each inventor is a statutory requirement under 35 USC 115, it cannot be waived. An oath or declaration in compliance with 37 CFR 1.63 and 1.64 signed by the Rule 1.47 applicants on behalf of the non-signing inventor is REQUIRED. See MPEP 409.03(a).

The Revocation and Power of Attorney and Change of Address, both filed May 22, 2002, have been entered and made of record. All future correspondence will be mailed the above-identified correspondence address of record.


Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
Box DAC
Washington, D.C. 20231

By facsimile: (703) 308-6916
Attn: Office of Petitions

By hand: Office of Petitions
2201 South Clark Place
Crystal Plaza 4, Suite 3C23
Arlington, VA 22202

Telephone inquiries should be directed to the undersigned at (703) 308-6712.


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